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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

May 12, 1994

NOTICE OF WRITTEN  
EX PARTE PRESENTATION

**BY HAND DELIVERY**

Mr. William Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W. Room 222  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Billed Party Preference, CC Docket No. 92-77

Opposition to Application of Billed Party Preference to Inmate Telephone Services

Dear Mr. Caton:

By undersigned counsel and pursuant to Section 1.1206(a)(1) of the Commission's Rules, Robert Cefail & Associates American Inmate Communications, Inc. ("RC&A") and Opus Correctional Inc. d/b/a LocTel ("LocTel"), two nationally recognized inmate service providers ("ISPs"),<sup>1/</sup> are writing to express their firm opposition to the application of billed party preference ("BPP") to inmate services.<sup>2/</sup> The Commission has previously concluded the inmate services "presents an exceptional set of circumstances that warrants their exclusion from" the

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<sup>1/</sup> RC&A provides inmate service to municipal, county and state correctional facilities throughout the United States. As a result of a recent federal court decision mandating that the U.S. Department of Justice, Federal Bureau of Prisons ("FBOP") provide collect calling service to inmates at FBOP institutions, LocTel has recently been requested to assume responsibility for collect call service at FBOP correctional institutions nationwide. In addition, Opus Telecom Inc., an affiliate of LocTel, is a leading vender of inmate telephone systems utilized in correctional institutions throughout the U.S. by such carriers as AT&T, GTE Federal Systems, and Sprint.

<sup>2/</sup> As it relates to BPP, "inmate service" refers to collect call services made available to inmates, and does not refer to operator services available to the public (e.g., to correctional administrators or at payphones in correctional institution lobbies).

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requirements of the Telephone Operator Consumer Services Improvement Act of 1990 and the Commission's operator services rules.<sup>3/</sup> The public interest concerns raised in the Commission's operator services rulemaking remained unchanged. Thus, in the event that it adopts BPP the Commission should exempt inmate services.

### **Background: Inmate Services**

By way of background (and as the Commission may be aware), due to the extremely high rate of fraudulent and harassing telephone calls completed by inmates who have access to live operators, to minimize the extraordinarily high costs of supervising inmate telephone service, and to enable correctional administrators to increase the availability of telephone service to inmates, ISPs such as RC&A and LocTel install and maintain in individual correctional institutions (subject to the close supervision of the correctional administrators) specialized telephone control systems which permit inmates to make collect calls which are handled on a fully automated basis without intervention of a live operator.

### **Inmate Services Should be Exempt from Billed Party Preference**

BPP should not be applied to these inmate telephone services. Regardless of whether BPP is in the public interest as it applies to telephone service available to the general public, application of BPP to the correctional environment would eliminate the call restriction and fraud control protections that have been built into inmate telephone control systems to minimize inmates' ability to complete fraudulent and harassing telephone calls.<sup>4/</sup> Often overlooked in

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<sup>3/</sup> *Policies and Rules Concerning Operator Service Providers*, 6 FCC Rcd 2744, 2752 at ¶ 15 (1991), *reconsidered in part and clarified in part*, 7 FCC Rcd 3882 (1992). It is important to note that in the Commission's operator services rulemaking (Docket 90-313) at least six of the Bell Operating Companies commented that inmate only service should not be treated as operator services. See September 7, 1990 comments of: the Ameritech Operating Companies (at 3); Bell Atlantic (at 6); BellSouth Telephone Companies (at 6-7); Pacific Bell and Nevada Bell (at 4); Southwestern Bell Telephone Company (at 6); and U S West Communications (at 8).

<sup>4/</sup> Even interexchange carriers that support BPP have recognized that it is in the public interest to exempt inmate telephone service from BPP. For example, Sprint, a vocal proponent of BPP, concluded early on that inmate service should be exempt from BPP. Sprint Reply Comments, August 27, 1992. In response to an inquiry from Commission Staff, Sprint recently reiterated its support for exempting inmate services, citing both the "unique nature of the prison environment," but also "a concern on Sprint's part of the risk of toll fraud from prisons phones if they were included in billed party preference." See September 21, 1993 ex parte letter from H. Richard Juhnke,

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discussions of BPP, the ability of correctional institutions to strictly regulate inmates' access to and use of alternate interexchange carriers and live operators is exactly the public interest benefit that today enables correctional institutions to make telephone service more widely available to inmates than in the past.

It would be short-sighted to presume that the benefits of collect-only inmate services have been (and will always be) available. In a proceeding investigating whether inmate services should be exempt from a Nevada rule prohibiting interexchange carriers from completing intraLATA traffic, Chief James Myers of the Washoe County jail testified in February 1992 in a Nevada Public Service Commission rulemaking proceeding<sup>5/</sup> that collect-only automated inmate service was not available from Nevada Bell, and that if RC&A was required to discontinue its automated collect-only service at the Washoe Jail and traffic were to default to Nevada Bell live operators, that monitoring inmate use of telephones would require almost 50 percent of each correctional officer's day. This explains why, despite MCI's vague and unsupported hypothesis (discussed below) that fraud and other call protections could be provided on a centralized network basis, the American Jail Association ("AJA") has recently concluded that BPP represents a substantial and unjustified risk that the necessary fraud and call controls currently offered by ISPs such as RC&A and LocTel will in fact not be available to a significant number of the 3,300 jails in the United States, especially those jails in rural areas.<sup>6/</sup>

### **Inmate Services Are Provided Under Highly Regulated Conditions**

Also, despite implications to the contrary in the record, the Commission should be aware that inmate services are provided under highly regulated circumstances, and therefore should not presume that BPP is necessary to protect the public interest. Obviously, correctional facilities are highly regulated environments. Service is normally provided only after a public bid and a contract is awarded; service and rates are generally dictated by the terms of the Request for Proposal. For example, the U.S. Department of Justice, Federal Bureau of Prisons' contract governing inmate services mandates that inmate rates not exceed dominant carrier rates. Moreover, even absent Commission regulation, inmate rates are often regulated. Inmate systems normally complete both intrastate and interstate calls. In the vast majority of states, in order to complete intrastate calls the ISPs must obtain state certification and comply with state service and rate rules. Thus, unlike operator services available to the general public at location such as hotel or motels, inmate service is subject to the strict scrutiny and regulation of both the correctional institutions and state regulators.

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<sup>5/</sup> Nevada Public Service Commission, Docket Nos. 91-8019 and 8022.

<sup>6/</sup> American Jail Association, December 3, 1993 ex parte in this proceeding to Mr. William Caton.

### **MCI's Speculative Proposal Should Not Be Adopted**

No serious argument has been (or can be) made that the fraud and call control protections which are currently built into premises-based inmate telephone control systems offered by ISPs such as RC&A and LocTel are not in the public interest. Clearly they are highly desirable precisely because they enable correctional facilities to make telephone service available to the greatest number of inmates with the minimum risk that inmates will engage in fraud or harassing telephone calls. Nonetheless MCI (alone among the commenters in this proceeding) has suggested that, in order to apply BPP to inmate services without jeopardizing the fraud and call controls necessary for inmate services, the Commission could mandate that *every* local exchange and interexchange carrier in the country implement some form of hypothetical network-based inmate control system.<sup>7/</sup>

Rather than adopting the simple solution of exempting inmate services from BPP (as the Commission did with regard to its operator services rules), MCI's hypothetical proposal would require that the Commission commit itself to a speculative and unnecessary solution that would impose significant, and presently unknown costs upon every local exchange carrier and interexchange carrier.<sup>8/</sup> This is an excessive, unreasonable, and intrusive measure which would ultimately increase (not reduce) the cost of providing inmate service; further, because the solution is unproven and technologically highly speculative, it cannot reasonably be assumed that it will work.<sup>9/</sup>

Besides the fact that a simpler solution is readily available, and that MCI's hypothetical solution does not yet exist, is technologically highly speculative, and the associated implementation costs are unknown, MCI's proposal will have another serious deleterious effect.

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<sup>7/</sup> MCI's October 25, 1993 ex parte in this proceeding (which outlines its network-based proposal) admits outright that except for MCI, "No other [interexchange carrier] offers inmate call control systems using a centralized network solution such as MCI's."

<sup>8/</sup> These costs, currently unquantified, are in addition to the already exorbitant estimates for BPP.

<sup>9/</sup> Indeed, in its September 27, 1993 ex parte in this proceeding, MCI, with considerable understatement, states that adoption of its network-based proposal "may affect the way call control systems are designed and administered. . . . The carrier industry and prison authorities will have sufficient opportunity, due to the time it will take to employ BPP, to devise new products and to adjust to the changes that BPP will require for Call Control." See the Inmate Calling Service Providers Task Force's December 7, 1993 ex parte in this proceeding (identifying a number of the inherent technical problems with MCI's network-based call control solution).

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The application of BPP to inmate services would eliminate all incentive for ISPs to continue to provide inmate call control systems. Thus, contrary to the public interest, it will eliminate the competitive incentive necessary for ISPs to continue to develop and upgrade call control and fraud features available to correctional administrators.

For these reasons, RC&A and LocTel vigorously oppose application of billed party preference to inmate services.

As required by the Commission's rules, an original and two copies of this filing are being submitted to the Secretary.

Very truly yours,



Jean L. Kiddoo, Esq.  
Dana Frix

Counsel for Robert Cefail & Associates,  
American Inmate Communications, Inc. and  
Opus Correctional Inc. d/b/a LocTel

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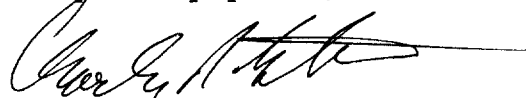
Re: **Ex Report**  
CC Docket No. 83-1376

Dear Mr. Caton:

On behalf of Alascom, Inc., this reports, in duplicate, that on May 11, 1994, Donn Wonnell met with A. Richard Metzger, Kathleen Levitz and James Schlichting of the Commission's staff and discussed matters of record in the above-referenced proceeding. This meeting concluded too late to permit the filing of this report on May 11, 1994.

In the event there any questions concerning this matter, please communicate with this office.

Very truly yours,



Charles R. Naftalin

cc: A. Richard Metzger  
Kathleen Levitz  
James Schlichting

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